

CALIFORNIA HORSE RACING BOARD

Submitted by Couto and Associates on behalf of Global Betting Exchange (GBE)

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| <p>couto&associates</p> <p>Submitted on behalf of Global Betting Exchange</p> | <p>2086. Definitions</p> <p>As used in this article:</p> <p>(a) “Back” means to wager on a selected outcome occurring in a given market.</p> <p style="text-align: center;">* * *</p> | <p style="text-align: center;">Alternative A</p> <p><u>“Best Execution” is the process by which the exchange operator may determine that an account holder making an offer to match a wager at specified odds is implicitly offering to match a wager at better odds if such are available and the exchange operator may adjust the offer to those better odds to generate an identically opposed wager that may then be matched. The benefit of this adjustment shall accrue to the account holder and not to the exchange operator.</u></p> <p style="text-align: center;">Alternative B</p> <p><u>(b) “Best execution” means the process by which an exchange provider facilitates the matching of identically opposing wagers at better odds than proposed, when available.</u></p> | <p>Based on the CHRB’s prior comments, GBE proposes the addition of “best execution” as a CHRB-defined term, inserted as subsection “(b).”</p> <p>“Best execution” is the process currently and commonly utilized by exchange wagering providers worldwide, including Betfair and Betdaq, to facilitate the matching of identically opposing wagers, at better odds than proposed.</p> <p>Though a fundamental and material practice on all exchanges, the term is not defined in the current draft of the CHRB’s regulations. Moreover, neither Betfair’s currently web-published “terms and conditions” nor its own “rules and regulations” provide a definition of the term. Despite consistent use of the process, the only reference to the process is buried in Betfair’s FAQ’s, and are inexplicably difficult to find.</p> <p>http://en.learning.betfair.com/app/answers/detail/a_id/2659</p> <p>Exclusion of the term from CHRB-approved definitions questionably defers substantively defining this important process to licensees who may offer differing definitions and applications inconsistent with the CHRB’s statutorily required duties of assuring the protection of the public and providing</p> | |

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| | | | uniformity of regulation. <i>See</i> , B&P Code, section 19401(a and d). It is unnecessary for the CHRB to defer this obligation in order to encourage or promote competition among providers. | |
| couto&associates Submitted on behalf of Global Betting Exchange | <p>2086.5. Application for License to Operate Exchange Wagering.</p> <p>(a) Prior to any exchange wagers being accepted, the applicant for license to operate exchange wagering must obtain a license from the Board.</p> <p>(b) An applicant must complete CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering, hereby incorporated by reference, which shall be available at the Board’s headquarters office. The application must be filed not later than 90 days in advance of the scheduled start of operation. A certified check in the amount of \$1,400,000 payable to the California Horse Racing Board, or an amount to be determined by the Board to fulfill Business and Professions Code section 19604.5(e)(6), a detailed operating plan as described under Rule 2086.6, Operating Plan Required, and proof of the applicant’s compliance with labor provisions of Business and Professions Code section 19604.5(f), must accompany the application.</p> | <p>(b) an applicant must complete CHRB form 229 (new 05/12) Application for License to Operate Exchange Wagering, hereby incorporated by reference, which shall be available at the board’s headquarters office. The application must be filed not later than 90 days in advance of the scheduled start of operation. <u>A bond from a surety company admitted in the state of California or other form of financial security in the amount of \$500,000 or such other amount as is reasonably determined by the board to ensure licensed exchange providers fulfill their assessment obligations under Business and Professions Code section</u></p> | <p>GBE proposes the additional language because it believes the rule as drafted exceeds the statutory authority conveyed upon the CHRB by the legislature.</p> <p>Business and Professions Code section 19604.5(e)(6) specifically limits the CHRB’s power to the <i>recovery of reasonable costs</i> associated with the licensing or regulation of exchange wagering from exchange wagering licensees. This section of the statute further limits the CHRB’s authority to the imposition of an assessment “that <u>does not exceed</u> the reasonable costs associated with the licensing or regulation of exchange wagering.” Accordingly, the law expressly prohibits the CHRB from prospectively funding such costs, particularly if the amount imposed exceeds the reasonable costs associated with the licensing or regulation of exchange wagering.</p> <p>Based on GBE’s decade of experience, the proposed \$1.4 million deposit is unreasonable and excessive, particularly when considered that each such potential licensee must submit an equal amount, suggesting that the CHRB has – without any prior experience in regulating exchange wagering – conducted an analysis and determined that the reasonable cost of regulating each licensee is equal at \$1.4 million, and that there are no economies of scale when more than one license is regulated.</p> | |

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| | | <p><u>19604.5(e)(6), must accompany the application,</u> a detailed operating plan required, and proof of the applicant's compliance with labor provisions of Business and Professions Code section 19604.5(f), must accompany the application.</p> | <p>The proposed language is proffered as a more feasible means to ensure the payment of such reasonable costs, in a manner that is entirely consistent both with the statute and existing CHRB regulations relating to the more traditional form of ADW. The proposed bond would act as a surety, guaranteeing the CHRB payment of "the reasonable costs" of licensing and regulating exchange wagering in a manner that does not exceed those reasonable costs. Should a provider fail to pay its share of these reasonable costs, the bond provides an immediate, accessible, and guaranteed source of payment for such assessment.</p> <p>Given that current ADW wagering handle is expected to significantly exceed exchange wagering activity in the near-term, the \$500,000 financial security/bond deposit deemed reasonable and required of ADW providers provides a clear and time-tested valuation as to the sufficiency of financial security needed. Furthermore, this form of financial security – rather than a certified check – not only ensures the CHRB access to sufficient funds to recover its reasonable costs, but it simultaneously enables providers/licensees to continue utilizing a significant amount of capital needed to successfully and legally operate their business.</p> | |
| <p>couto&associates</p> <p>Submitted on behalf of Global Betting Exchange</p> | <p>2086.6. Operating Plan Required.</p> <p>(b) (2) Evidence of an established account with an Federal Deposit Insurance Corporation (FDIC) insured bank in which all funds of the account holders will be deposited. This shall include evidence that account holder's funds are segregated and held in a separate FDIC insured bank account of the exchange provider, and that the funds shall not be used for any purpose other than those required by the account holder's</p> | <p>(b) (2) Evidence of an established account with an Federal Deposit Insurance Corporation (FDIC) insured bank in which all funds of the account holders will be deposited. This shall include evidence that account holder's funds are segregated and held in <u>trust in</u> a separate FDIC insured</p> | <p>As the MEC bankruptcy inadvertently revealed, licensees essentially commingled parimutuel monies owing others with operating funds, relying solely on internal financial controls ("segregation") to ensure allocation/distribution to third-parties who were statutory recipients of such monies. This included not only entities to which ancillary distributions were owed, but to bettors who had bet on MEC races through out-of-state/simulcast sites/ADW partners.</p> <p>Similar practices currently exist among licensed ADW providers, where no trust account protections are required,</p> | |

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| | exchange wagering transactions. | bank account of the exchange provider, and that the funds shall not be used for any purpose other than those required by the account holder's exchange wagering transactions. | <p>creating an unnecessary risk to account holders.</p> <p>As a consequence, GBE concurs with those who have suggested California licensees be required to hold account holders' monies in trust, as part of a comprehensive, reasonable set of exchange wagering regulations adopted by the CHRB. In doing so, GBE recognizes and concedes that U.S. bankruptcy law would not extend the same protections to account holders' whose funds are held in "segregated" accounts rather than in accounts held in trust. The legislature previously confirmed the importance of this distinction and enacted Business & Professions Code section 19597.5 as a means to protect all statutory distributees, including winning bettors.</p> <p>The existence or non-existence of such protections being afforded parties by the CHRB in regulations promulgated before enactment of Business & Professions Code section 19597.5 does not justify the CHRB knowingly excluding such protections in this instance.</p> | |
| <p>couto&associates</p> <p>Submitted on behalf of Global Betting Exchange</p> | <p>2087.6. Cancellation of Matched Wagers.</p> <p>(a) An exchange provider may cancel or void a matched wager if required by law or where, in its sole discretion, it determines:</p> <p>(1) there is a technological failure and the market must be voided; or</p> <p>(2) there is good cause to suspect that a person placing a wager through the exchange has breached any term of the person's agreement with the exchange provider;</p> | <p>2087.6. Cancellation of Matched Wagers.</p> <p>(a) An exchange provider may cancel or void a matched wager if required by law or where, in its sole discretion, it determines:</p> <p>(1) there is a technological failure and the market must be voided; or</p> <p>(2) there is good cause to suspect that a person placing a wager through the exchange has breached any term of the person's agreement with the</p> | | |

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| | <p>(3) it is in the interest of maintaining integrity and fairness in a particular market; or</p> <p>(4) human error by the exchange wagering provider in recording an exchange wager.</p> <p style="text-align: center;">* * *</p> | <p>exchange provider;</p> <p>(3) it is in the interest of maintaining integrity and fairness in a particular market; or</p> <p>(4) human error by the exchange wagering provider in recording an exchange wager; <u>or,</u></p> <p><u>(5) the scratch of an entry will result in the price of matched wagers in a corresponding market being materially reduced in an amount equal to or in excess of the proportional reduction factor set forth in the provider's Operating Plan.</u></p> | <p>Traditional forms of parimutuel wagering, including ADW, allow bettors/account holders to cancel pending wagers, including in the event of a late scratch. The proposed rule would permit the exchange provider to establish a policy in its Operating Plan permitting account holders the election to cancel pending matched wagers when the late scratch of an entry results in a material reduction in the price to be paid as a result of a proportional reduction corresponding to the scratch.</p> <p>Such a policy would be fair to all players/account holders, as well as consistent with existing parimutuel wagering cancellation practices.</p> | |
| couto&associates Submitted on behalf of Global Betting Exchange | <p>2089. Errors in Payments of Exchange Wagers.</p> <p>If an error occurs in the payment of amounts for exchange wagers, the following shall apply:</p> <p>(a) In the event the error results in an over-payment to the individuals wagering, the exchange provider shall be responsible for such payment.</p> | <p>(a) <u>In the event an error results in the overpayment of funds to an account holder or holders wagering on the exchange, the exchange provider may prohibit the withdrawal of funds equal to the overpayment. Upon</u></p> | <p>GBE respectfully submits that the rule as drafted is flawed for three reasons.</p> <p>First, the CHRB's rationalization of new regulations addressing "overpayments" by exchange wagering/ADW providers based on comparisons to regulations applying to anonymous parimutuel wagers placed at racing associations is</p> | |

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| | | <u>discovery of the error, the exchange provider shall immediately notify both the CHRB and account holder of the overpayment. Upon the submission of proof of such overpayment to the CHRB and affected account holder, the exchange provider shall be entitled to recover from such account holder the amount of the overpayment. Should an account holder dispute the overpayment, the account holder may request in writing that the Board determine the validity of the overpayment.</u> | <p>anachronistic and short-sighted.</p> <p>The nature of anonymous parimutuel wagering renders the correction of payment errors extremely difficult, if not impossible to rectify. However, in the context of licensed exchange wagering/ADW such wagers may only be placed by disclosed account holders whose wagering activities are documented and maintained for just this purpose; i.e., to ensure the accuracy of such wagering activities and payments.</p> <p>In the context of ADW wagering, it is our understanding that California licensed ADW providers have been permitted to correct such errors with account holders since ADW was first enacted, and that their terms and conditions include provisions contractually ensuring such rights. Both Betfair and Betdaq currently include provisions permitting each to correct such error in their own exchange wagering terms and conditions.</p> <p>Were the CHRB to enact this regulation as written, unlike ADW providers, exchange providers will be precluded from doing so. GBE believes this is an unintended oversight that the CHRB should rectify at this time.</p> <p>Second, GBE further, and respectfully, requests the CHRB consider anew how this regulation addresses the issue of “underpayments,” as the two are interrelated. For every overpayment there is generally a corresponding underpayment. Rectifying one likely has an impact on the other.</p> <p>Unlike traditional parimutuel wagering payout errors made by and/or at a racing association, exchange wagering/ADW errors can and are properly corrected for all account holders, avoiding the inherent inequities some bettor experience when they discard a ticket affected by such errors. The fact that payment errors cannot be fully rectified on-track should not</p> | |

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| | | | <p>impact the ability of providers and account holders to rectify equitably such errors in the context of account/exchange wagering.</p> <p>Thirdly, GBE believes the regulation as drafted relieves the provider of the obligation to correct a known underpayment not recognized by the account holder. Correction of an underpayment should not be dependent on the account holder initiating a request to the provider, but rather upon recognition of the underpayment by either party.</p> | |
| couto&associates Submitted on behalf of Global Betting Exchange | <p>2089.5. Requirements to Establish an Exchange Wagering Account.</p> <p>(b) The information required to establish an account shall include:</p> <p>(1) The prospective account holder's full legal name.</p> <p>(2) The principal residence address of the prospective account holder. Such address shall be deemed the address of record for mailing checks, withdrawals, statements, if any, of the account, notices, or other correspondence or materials. It is the responsibility of the account holder to notify the exchange provider of any address change.</p> <p>(3) Telephone number.</p> <p>(4) Social Security Number or Individual Tax Identification Number.</p> <p>(5) Certification or other proof that the applicant is at least 18 years of age.</p> | <p><u>(6) An affirmative representation that the applicant is not an agent for or otherwise acting on behalf of a third-party.</u></p> <p><u>(7) As a requirement to place</u></p> | <p>This proposal includes a requirement that those intending to place lay wagers simply answer six inquires in addition to those required under subsections (b) 1 through 5. As such it is neither burdensome nor unreasonable.</p> | |

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| | | <p><u>lay wagers, the applicant must also provide the following information and written representations, executed under penalty of perjury:</u></p> <p><u>(A) Board license numbers, if any.</u></p> <p><u>(B) That the applicant:</u></p> <p><u>(i) Has accurately and truthfully provided all information and will not take steps to conceal the applicant's true identity by using pseudonyms, false addresses, or by employing technical means to conceal one's identity, location, or effort to wager on behalf of a third-party.</u></p> <p><u>(ii) Shall not conspire or cooperate with any other individual(s) to ensure the success of an exchange wager to lay a horse.</u></p> <p><u>(iii) Shall not knowingly place an exchange wager to lay an entrant in a horse race where the applicant has obtained information directly or indirectly from that entrant's owner(s) or authorized agent, trainer, substitute or assistant trainer, jockey, jockey's agent, driver, or stable employee, veterinarian or veterinarian's assistant, or any agent, representative, or relative thereof.</u></p> | <p>Because of stakeholders' perceived integrity concerns, GBE offered for consideration an unobtrusive means to further scrutinize the activities of those making lay wagers. Such reasonable, heightened scrutiny would both impresses upon account holders the need to engage in exchange wagering in an ethical and legal manner, but would provide the CHRB an more effective means to ensure the integrity of the exchange and/or punish those who do so in an illegal fashion.</p> <p>The required representations, made under penalty of perjury, will in fact provide the CHRB a more considered means to address such behavior, specifically crafted for the purpose of monitoring and regulating exchange wagering. The suggested regulation will fortify the CHRB's ability to regulate exchange wagering in ways that pre-existing rules and statutes specifically created to address scenarios more commonly associated with traditional forms of parimutuel wagering cannot.</p> <p>Under the proposed regulation, those found to have responded untruthfully or in an incomplete fashion are not only subject to discipline/prosecution under existing law, but under the law relating to perjury as well. Consequently, the proposed language provides the CHRB a remedy specifically crafted as the result of consideration of stakeholders' perceived concerns unique to the concept of "lay" wagers.</p> | |

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| | | <p><u>(iv) Has not been convicted of race fixing, bookmaking, or any crime involving gambling or moral turpitude in any jurisdiction, foreign or domestic.</u></p> <p><u>(c) Every exchange wagering provider shall obtain from those applicants seeking to engage in exchange wagering the written representations and warranties required under subsection (b) prior to the applicant being permitted to place any exchange wagers, and shall be required to maintain such documents as business records at all times, providing to the Board or its authorized agents true and accurate copies of any such documents and/or access to the original documents upon demand.</u></p> | | |
| couto&associates Submitted on behalf of Global Betting Exchange | 2090. Posting Credits for Winnings from Exchange Wagers. (a) Credit for winnings from matched wagers placed with funds in an account shall be posted to the account by the exchange provider after the race is declared official. (b) Notwithstanding Rule 1955 of | (a) Credit for winnings from matched wagers placed with funds in an account shall be posted to the account by the exchange provider after the race is declared official. (b) <u>Credit for any wagers on a</u> | In rejecting this recommendation – a new subsection(b) – | |

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| | <p>this division, where the outcome of a matched antepost wager can be determined with certainty by the exchange provider prior to the time that the race is declared official, the exchange provider may settle such matched antepost wager as soon as that outcome is determined with certainty.</p> | <p><u>scratched entry shall be posted to the account by the exchange provider immediately after the scratch.</u></p> <p>(b)c) Notwithstanding Rule 1955 of this division, where the outcome of a matched <u>antepost</u> wager can be determined with certainty by the exchange provider prior to the time that the race is declared official, the exchange provider may settle such matched <u>antepost</u> wager as soon as that outcome is determined with certainty.</p> | <p>previously, the CHRB reasoned that accommodation requested be extended to account holders was sufficiently addressed in existing subsection (b) language. However, the CHRB then modified subsection (b) language by including an “antepost” reference, which negated the precise accommodation afforded under the proposal; i.e., clarification that credit for any wagers on scratched entries, in addition to antepost wagers, could be posted immediately after such scratch.</p> <p>While some may argue that such accommodation may indirectly exist elsewhere, for the sake of clarity and consistency, this rule should be amended as proposed in direct correlation with the duty to post such credits.</p> | |